

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	CR No. 17-00041-WES
	:	
EFRAIN DELACRUZ	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

This matter has been referred to me pursuant to 28 U.S.C. § 636(b)(1)(B) and 18 U.S.C. § 3401(i) for proposed findings of fact concerning whether Defendant is in violation of the terms of his supervised release and, if so, to recommend a disposition of this matter. In compliance with that directive and in accordance with 18 U.S.C. § 3583(e) and Fed. R. Crim. P. 32.1, a revocation hearing was held on August 4, 2021, at which time Defendant, through counsel and personally, admitted that he was in violation of his supervised release conditions as to three of the five charged violations. At the hearing, I ordered Defendant detained pending my Report and Recommendation and final sentencing before District Judge William E. Smith.

Based upon the following analysis and the admission of Defendant, I recommend that Defendant be sentenced to time-served at the time of final sentencing followed by twenty-four months of supervised release with the first ninety days of supervised release to be served in a residential re-entry center approved by the Probation Office and with conditions listed below.

Background

On May 17, 2021, the Probation Office petitioned the Court for the issuance of an arrest warrant. On that date, the District Court reviewed the request and ordered the issuance of an arrest

warrant. On August 4, 2021, Defendant was brought before the Court for a revocation hearing at which time he admitted to the following charges:

Violation No. 1. Special Condition: Defendant shall spend ninety days at a residential treatment program, specifically at the Phoenix House in Exeter, Rhode Island. Defendant shall contribute to the cost of all ordered treatment based on the ability to pay, as determined by the Probation Officer.

Defendant arrived at the Phoenix House residential treatment program on March 24, 2021. On April 30, 2021, Defendant was terminated from the Phoenix House residential treatment program due to recent use of opiates, as evidenced by reports from the Phoenix House.

Violation No. 2. Mandatory Condition: Defendant must refrain from any unlawful use of a controlled substance.

Defendant used benzodiazepines, as evidenced by his positive drug screen on August 17, 2020. Defendant used marijuana, as evidenced by his positive drug screens on August 17, 2020; January 12, 2021; January 29, 2021; March 25, 2021; May 3, 2021; and May 13, 2021. Defendant used opiates as evidenced by his positive drug screens on August 17, 2020; and April 21, 2021. Defendant used fentanyl as evidenced by his positive drug screen on January 12, 2021.

Violation No. 3. Special Condition: Defendant shall participate in and satisfactorily complete a program of mental health treatment, as directed and approved by the Probation Office. Defendant shall contribute to the costs of such treatment based on ability to pay as determined by the Probation Officer.

Defendant failed to attend co-occurring treatment sessions at CODAC on September 8, 2020; October 9, 2020; October 21, 2020; October 28, 2020; November 2, 2020; and December 2, 2020. Defendant failed to attend intensive outpatient treatment on May 6, 2021; May 12, 2021; and May 13, 2021.

As Defendant has admitted these charges, I find he is in violation of the terms and conditions of his supervised release.

At the August 4, 2021 hearing, the Government made an oral motion to amend the Violation Petition to withdraw the following charges without prejudice:

Violation No. 4. Mandatory Condition: Defendant must not commit another federal, state, or local crime.

On March 7, 2021, Defendant committed the offense of felony Domestic Assault, as evidenced by the Providence Police Department report filed on that same date.

Violation No. 5. Defendant must not commit another federal, state, or local crime.

On May 15, 2021, Defendant committed the offense of felony Violation of a No Contact Order, as evidenced by the North Kingstown Police Department report filed on the same date.

The Government's oral motion to withdraw these charges without prejudice was GRANTED.

Recommended Disposition

Section 3583(e)(2) provides that if the Court finds that Defendant violated a condition of supervised release, the Court may extend the term of supervised release if less than the maximum term was previously imposed. The maximum term of supervised release was previously imposed; therefore, the term cannot be extended.

Section 3583(e)(3), provides that the Court may revoke a term of supervised release and require the Defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post release supervision, if the Court finds by a preponderance of evidence that the defendant has violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be sentenced to a term beyond 5 years if the instant offense was a Class A felony, 3 years for a Class B felony, 2 years for a Class C or D felony, or more than one year for a Class E felony or a misdemeanor. Defendant was on supervision for a Class C felony. Therefore, he may not be required to serve more than two-years' imprisonment upon revocation.

Pursuant to 18 U.S.C. § 3583(h) and § 7B1.3(g)(2), when a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum

term of imprisonment authorized, the Court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. The authorized statutory maximum term of supervised release is three years. The Court may impose the above-noted statutory maximum, minus the term of imprisonment that is to be imposed for this revocation.

Section 7B1.1 provides for three grades of violations (A, B, and C). Subsection (b) states that where there is more than one violation, or the violation includes more than one offense, the grade of violation is determined by the violation having the most serious grade.

Section 7B1.1(a) notes that a Grade A violation constitutes conduct which is punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device; or any other offense punishable by a term of imprisonment exceeding twenty years. Grade B violations are conduct constituting any other offense punishable by a term of imprisonment exceeding one year. Grade C violations are conduct constituting an offense punishable by a term of imprisonment of one year or less; or a violation of any other condition of supervision.

Section 7B1.3(a)(1) states that upon a finding of a Grade A or B violation, the Court shall revoke supervision. Subsection (a)(2) provides that upon a finding of a Grade C violation, the court may revoke, extend, or modify the conditions of supervision. Defendant has committed a Grade C violation. Therefore, the Court may revoke, extend, or modify the conditions of supervision.

Section 7B1.3(c)(1) provides that where the minimum term of imprisonment determined under § 7B1.4 is at least one month, but not more than six months, the minimum term may be satisfied

by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e) for any portion of the minimum term. Should the Court find that Defendant has committed a Grade B or C violation, § 7B1.3(c)(2) states that where the minimum term of imprisonment determined under § 7B1.4 is more than six months but not more than ten months, the minimum term may be satisfied by (A) a sentence of imprisonment; or (B) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in §5C1.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment. The second provision which allows for alternatives for one-half of the minimum term applies to this matter.

Section 7B1.3(d) states that any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served in addition to the sanction determined under § 7B1.4 (Term of Imprisonment), and any such unserved period of confinement or detention may be converted to an equivalent period of imprisonment. There is no outstanding restitution, fine, home detention, or intermittent confinement.

Section 7B1.4(a) provides that the criminal history category is the category applicable at the time Defendant was originally sentenced. Defendant had a Criminal History Category of III at the time of sentencing.

Should the Court revoke supervised release, the Revocation Table provided for in § 7B1.4(a) provides the applicable imprisonment range. Defendant committed a Grade C violation and has a Criminal History Category of III. Therefore, the applicable range of imprisonment for this violation is five to eleven months.

Section 7B1.5(b) provides that, upon revocation of supervised release, no credit shall be given toward any term of imprisonment ordered, for time previously served on post-release supervision.

Analysis and Recommendation

Defendant commenced supervised release on August 12, 2020 after serving a sentence for a 2017 bank robbery. He has a long history of substance abuse and mental health issues. Upon release, he almost immediately relapsed to drug use and failed to attend numerous treatment appointments. As an alternative to violation proceedings, Probation sought a modification for residential drug treatment which was ordered by Judge Smith on February 4, 2021. Defendant never entered the treatment program as ordered.

He was arrested and appeared before me on a violation charge on March 10, 2021. He was detained for two weeks and then released on March 24, 2021 and given a second chance to attend the residential treatment program. He attended until his termination from the program on April 30, 2021 due to use of opiates while in the program.

Defendant has been detained since May 15, 2021. He has two pending state charges – domestic simple assault (March 7, 2021) and a no contact order violation (May 15, 2021) which remain pending and are no longer part of this violation case. Defendant has admitted to Grade C violations. The guideline range is five to eleven months. The Government seeks an eight-month sentence followed by further supervision. The Defense counters that a time-served sentence with a transitional period of time in a half-way house is more reasonable. I agree with the Defense and so recommend. Defendant's violations arise out of his uncontrolled substance abuse issues. He needs structure and treatment to overcome those issues. He has been held since May 15, 2021 and had an additional two-week period of detention in March. Time-served at the time of final sentencing should

be close to approaching the five-month, low-end of the guideline range and is a sufficient sentence for these admitted Grade C violations.

Conclusion

After considering the sentencing factors set forth in 18 U.S.C. § 3553(a), I recommend that Defendant be sentenced to time-served at the time of final sentencing followed by twenty-four months of supervised release with the following conditions:

1. Defendant shall participate in a program of mental health treatment as directed and approved by the Probation Office.
2. Defendant shall participate in a program of substance abuse treatment (inpatient or outpatient) as directed and approved by the Probation Office.
3. Defendant shall participate in a program of substance abuse testing (up to seventy-two drug tests per year) as directed and approved by the Probation Office.
4. Defendant shall contribute to the costs of such treatment and testing based on ability to pay as determined by the Probation Officer.
5. Defendant shall spend three months in a residential reentry center, preferably the Houston House in Pawtucket, Rhode Island. While at said facility, Defendant shall comply with all the policies, procedures, and regulations therein.
6. Defendant shall permit the Probation Officer, who may be accompanied by either local, state, or federal law enforcement authorities, upon reasonable suspicion of a violation of supervision, to conduct a search of Defendant's residence, automobile and any property under Defendant's control or ownership.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen days of its receipt. Fed. R. Crim. P. 59; LR Cr 57.2. Failure to

file specific objections in a timely manner constitutes a waiver of the right to review by the District Court and the right to appeal the District Court's Decision. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
August 5, 2021